

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 5707 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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SOMABHAI KANJIBHAI PATEL

Versus

BABUBEN MAFATLAL SHAH

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Appearance:

MR PB MAJMUDAR for Petitioner

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CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 27/02/96

ORAL JUDGEMENT

This Appeal is preferred by the original defendant, who had executed an Agreement of Sale in favour of the plaintiff in respect of the Suit property, that is to say, land admeasuring 22174 sq.mtrs. forming part of Revenue Survey No.17.

2. The respondent plaintiff had filed Special Civil Suit No.430/83 against the defendant for specific

performance of the Agreement of Sale executed by the defendant in favour of the plaintiff, which is a registered document, and whereunder the plaintiff was placed in possession of the land in question, having paid the defendant the full consideration in respect of the contemplated sale.

3. The trial Court after raising the appropriate issues and recording the evidence thereon, ultimately passed a decree in favour of the plaintiff and against the defendant.

In substance the trial Court passed a conditional decree to the effect that the defendant shall obtain the permission after giving notice under Section 26 of the Urban Land (Ceiling & Regulation) Act, 1976 at the cost of the plaintiff, and subject to such permission being granted the defendant shall execute the sale deed in favour of the plaintiff in respect of the suit land, failing which the plaintiff may obtain the Sale deed in execution of the Decree through the Court Commissioner, and in case of such permission is not granted by the appropriate authority under the said Act, the plaintiff will be entitled to recover Rs.60,999/- being the full consideration in respect of the contemplated sale, with running interest at the rate of 12 per cent from the date of the suit till realisation.

4. It is this Decree which is the subject matter of challenge in the present Appeal.

5. The learned Counsel for the appellant first contended that no Decree could be passed against the defendant inasmuch as the Agreement of Sale executed by the appellant defendant was in respect of the property which was not the defendant's personal property, but the property of the defendant's HUF. This contention is required to be noted only to be rejected inasmuch as no specific contention in this regard appears to have been taken in the written statement by the defendant. In any case there is no specific issue on this point. Even otherwise this contention has been considered and rejected by the trial Court for want of any credible evidence to indicate that the subject matter of the Agreement of Sale was the HUF property of the defendant. This contention must, therefore, fail.

6. The next contention raised by the learned Counsel for the appellant is that the Decree for specific performance of the Suit Agreement should not be passed in view of Section 16(c) of the Specific Relief Act inasmuch

as the plaintiff has not, according to the appellant defendant, averred in the plaint that the plaintiff is ready and willing to perform her part of the contract, that is to say, to pay the balance of consideration of the amount and/or has not deposited the same in the Court at the time of filing of the Suit. In the context of this contention, it must also be noted that there is no specific issue raised. However, the trial Court has considered this contention and discussed the same at length in Para : 10 of the Judgment.

Having considered the plaint as a whole and the substantive averments made therein, and having considered the deposition on behalf of the plaintiff, the trial Court has recorded a clear cut finding that the plaintiff has performed her entire obligation under the Agreement of Sale by making the full payment of the consideration of sale, and has consequentially been put in actual possession of the Suit land, which is the subject matter of the Agreement. Thus, all that remained to be done was the execution of sale deed. Under the circumstances the trial Court was correct in concluding that since the plaintiff has already performed all her obligation under the suit Agreement, Section 16(c) of the Specific Relief Act cannot come in her way.

7. The next contention sought to be raised by the learned Counsel for the appellant is based upon Section 54 of the Contract Act. In this context the learned Counsel sought to contend that the Agreement of sale was or incapable of being enforced inasmuch as the land which is the subject matter of the transaction is no longer of the ownership of the defendant, and that the same is finally vested in the State Government under the relevant provisions of the Urban Land (Ceiling & Regulation) Act. Firstly this contention is a hypothetical contention not supported by evidence on record. The learned Counsel for the appellant is unable to point out any evidence on record from which it can be said that proceedings against the defendant in respect of the suit land under the ULC Act have culminated in the issuance of a notification under Section 10(2) of the said Act, whereupon it can be said that the suit land has vested in the State Government free from all encumbrances. It is an admitted position that the notification under Section 10(2) is not on record of the case, assuming that the same had been issued during the pendency of the trial. However, this aspect has been taken into consideration by the trial Court and discussed in para : 15 of the Judgment. It appears that the learned Advocate for the defendant in the trial Court had placed on record an order said to have been passed by the competent officer and Additional

Collector to indicate that the suit land has been declared to be surplus vacant land under the said Act. What is required to be noted is that this order has merely been produced by the learned Advocate for the defendant, and that too after the arguments of both the sides had been completed. In any case the discussion by the trial Court clearly discloses that the said order was not exhibited and, therefore, cannot be read in evidence. Even assuming in favour of the defendant that the suit land has vested in the State Government, the only conclusion that can be done there from is that the defendant would not himself be able to execute the Sale Deed in favour of the plaintiff as of right. However, such a Sale Deed can be executed subject to the proper permission being obtained under the relevant provisions of the said Act. The trial Court has clearly spelt out this position in its judgment and also in the operative part of the order and has accordingly passed a conditional decree, subject to such permission being obtained. Thus, this contention cannot be of any assistance to the appellant.

In any case, taking the alternative view, if the proceedings under the Land Ceiling Act have been completed and the land has already vested in the State Government, the State Government would certainly say so when the defendant seeks permission under the said Act to transfer the said land (by executing a sale deed in favour of the plaintiff). Even in the case of the other alternative, assuming that proceedings under the Land Ceiling Act have not been completed and the defendant makes an application for permission to execute the Sale Deed as directed by the decree, the option still rests with the State Government as to whether such permission should or should not be granted. Thus, it cannot be said that the defendant is incapable of transferring the said land, even subject to the grant of permission by the State Government under the said Act.

8. Even otherwise the trial Court has passed only a conditional decree, whereby it has been specified that in case the appropriate authority under the ULC Act does not grant permission for sale, the plaintiff would then be entitled to recover the full amount of consideration already paid to the defendant together with interest at the rate of 12 per cent. Thus, the appellant herein cannot sustain the contention that the decree is incapable of execution since the trial Court has already contemplated the alternative and has taken care of the contingency (in case the transfer is refused by the appropriate authority under the Land Ceiling Act).

9. So far as other part of the Decree is concerned, viz. that the defendant shall pay to the plaintiff the full amount of consideration with interest at the rate of 12 per cent, in case the permission is refused by the Appropriate Authority under the said Act, the learned Counsel for the appellant is unable to seriously dispute the necessity and/or justification for the same, both in law and in equity.

10. No other point was urged.

11. In view of the aforesaid discussion, the Judgment and Decree challenged in this Appeal is entirely sustainable and requires no interference in the present Appeal. This Appeal is, therefore, dismissed.

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